

## WASTEWATER TREATMENT PLANT INSPECTION AND MAINTENANCE AGREEMENT

This agreement (the "Agreement") is made and entered into this 12TH day of APRIL, 2019, by and between "M. JAGIN & ASSOCIATES" (hereinafter referred to as the "Operator") and "Kiawah River Utility Company" (hereinafter referred to as the "Owner").

WITNESSETH:

WHEREAS, the Owner owns or controls the property known as, "Kiawah River Wastewater Treatment Plant" as well as the related wastewater infrastructure serving the development known as Kiawah River (the "Development") located on Johns Island, South Carolina; and,

WHEREAS, a contract is to be executed between the Owner and aa entity to manage and maintain the wastewater treatment plant and related facilities prior to the issuance of a permit (Operation Permit) for said system; and

WHEREAS, a condition of the Operation Permit for the system is that a properly executed contract between the Owner and a management entity shall be in effect for as long as the system is in use; and

WHEREAS, Owner selected Operator to serve as that management entity, and Operator has been determined to be qualified by the SC Department of Health and Environmental Control (SCDHEC).

NOW THEREFORE, in consideration of the promises and mutual covenants contained in this Agreement, it is hereby agreed by and between the Owner and the Operator as stipulated below:

**1. The Operator Obligations.** The Operator shall perform the following services on the Owner's system located at 2501 Mullet Hall Rd., Johns Island, South Carolina.

- Inspect facility as may be needed to assure proper operation and as may be requested or required by SCDHEC basis for proper operation, (generally weekly).
- Notify Owner of mechanical malfunction and correct any mechanical malfunctions to the treatment plant facility, spray fields and collection system sewage pump stations if with the scope of expertise or recommend the services of a qualified service provider to correct the malfunction.
- Provide all preventative maintenance to the treatment plant facility, spray fields and collection system sewage pump stations located on the Development.
- Sample and test as required by SCDHEC.
- Complete and submit all SCDHEC required reports at specified dates.
- Maintain proper operator license as required by SCDHEC in good standing and to notify Owner immediately if SCDHEC takes any action against Operator or the license is suspended or revoked.
- Keep complete and reliable records on all time spent, all services performed, all costs incurred (e.g., labor, materials, equipment), all test

results, all analyses, or other actions taken in the inspection, repair, and maintenance of the wastewater treatment plant and related facilities.

- Comply with all local, state, and federal laws and regulations applicable to the operation of the wastewater system.
- Obtain all business licenses or other licenses, permits, or approvals that may be needed for Operator to perform the services under this Agreement.
- Make sure the persons who perform operating services for Operator are properly licensed meaning holding a valid Physical/Chemical Trainee Permit or certification issued by the SC LLR Board and otherwise qualified to perform those services under the direct supervision of the Operator meaning reporting the findings of an inspection to the Operator via phone or text message immediately after discovery of the findings.
- Abide by all restrictive covenants, rules, and regulations that may apply to Operator and its employees, subcontractors, and other vendors while they are within the Development.
- Abide by the other provisions of this Agreement applicable to Operator.

**2. The Owner's Obligations.**

- The Owner shall pay the Operator the sum of \$5,000.00 for contract initiation due at time of signing contract. \$500.00 per month base retainage fee and \$50 per hour, paid monthly for inspections, routine procedures, preventative maintenance and reports.
- The Owner is responsible for all costs associated with any mechanical, treatment plant piping or spray field repairs. The owner shall put in place a purchase order approval system to facilitate the approval and payment to any contractor or supply vendor utilized in the operation of the facility.

**3. Term.** This Agreement shall remain in effect until terminated as set forth below:

- a. Automatic Termination. This Agreement shall automatically terminate if the Operation Permit for the system is revoked and all appeals of the revocation are exhausted, or time for taking any appeal has passed, or if the Operator no longer holds a valid license from SCDHEC for operating wastewater treatment facilities.
- b. Termination by Mutual Consent. The parties may mutually agree to terminate this Agreement by giving written notice of termination by mutual consent to SCDHEC, ninety (90) days in advance of the date of termination.
- c. Termination by the Owner. The Owner may terminate this Agreement by giving notice to the Operator and to both the local SCDHEC Regional office and the SCDHEC Central office ninety (90) days in advance of the date of termination.

- d. Termination by the Operator. The Operator may terminate for cause by giving written notice of intent to terminate this Agreement to the Owner and to SCDHEC ninety (90) days in advance of the date of termination. Cause shall be defined as:
  - a. Failure of Owner to remit payment for any bills for services performed under and in accordance with this Agreement if said bill is not paid within 60 days of receipt by the Owner. If said bill is paid after notice of termination is given but prior to the date of termination of this Agreement, this Agreement shall continue in full for force and effect; or
  - b. Failure of the Owner to provide to the Operator authorization to complete needed repairs or satisfactory evidence that needed repairs to the system were completed by another entity within 30 days of receipt of notice of needed repairs or evidence of completion of said repairs is provided after notice of termination is given but prior to the date of termination of this agreement, this Agreement shall continue in full force and effect;
  - c. Failure of the Owner to allow the Operator such access to the system as is reasonably necessary in order for the Operator to comply with the terms of this Agreement.

4. Assignment.

- a. Assignment by the Owner. The Owner shall notify the Operator of the name and address of any purchaser of the property on which the system is located. The Owner shall also notify any purchaser of the property of the existence of this Agreement and shall assign all rights and duties under this Agreement to said purchaser.
- b. Assignment by the Operator. The Operator may not assign its rights and duties under this Agreement to another management entity unless approved by SCDHEC and unless the Owner consents in writing. The Operator will provide 90 days advance written notice to the Owner and to both the local health department and SC DHEC of a request for assignment.

- 5. Use of Subcontractors. The Operator may subcontract with such manufacturers, suppliers, and contractors as it deems necessary with prior Purchase Order authorization from the owner to perform any of the required functions of the facility under this Agreement; The Owner shall at all times remain responsible for the performance of and payment for all work performed by all subcontractors. Operator shall only use pre-approved, properly licensed, qualified manufacturers, suppliers, and contractors for those services.

6. **Representations**. The parties represent to each other that each has the power, authority, and legal right to enter into and perform its obligations as set forth in this Agreement.
7. **Regulatory Amendments**. Any references to laws and regulations in this Agreement shall include, but not be limited to, SCDHEC Regulations 61.56 and R. 61 – 9 and shall include any amendments or replacements to such regulations in the future.
8. **No Implied Waiver**. The waiver by either party of a default or a breach by the other party of any provision of this Agreement shall not operate or be construed to operate as a waiver of any subsequent default or breach. The failure at any time of either party to enforce any provision of this Agreement (a) shall not be construed to be a waiver of such provisions, or of any other provisions; and (b) shall not in any way affect the validity of this Agreement, or any part of this Agreement, or the right of either party thereafter to enforce each and every provision of this Agreement.
9. **Notice**. Every notice required under this Agreement shall be in writing and shall be deemed sufficiently given if delivered in person or registered mail, turn receipt, requested, postage prepaid to the party to be notified and addressed as follows:

To the Owner:      John C.L. Darby, President  
                               Kiawah River Utility Company  
                               211 King Street , Suite 300  
                               Charleston, SC 29401

To the Operator:    Michael J. Agin  
                               3008 Plow Ground Rd.  
                               Johns Island, SC 29455

To SC DHEC Central Office: South Carolina Department of Health and  
   Environmental Control Bureau of Water, Domestic  
   Wastewater Permitting Section  
   2600 Bull Street,  
   Columbia, SC 29201

To SC DHEC Regional Office: South Carolina Department of Health and  
   Environmental Control Lowcountry Region EQC Office  
   1362 McMillan Avenue Suite 300  
   Charleston, SC 29405

The date of any notice shall be the date of personal delivery or the date shown on the return receipt as the date of delivery or attempted delivery, as the case may be. Changes in the respective addresses to which notice may be directed may be made from time to time by either party by notice to the other party. All such notices shall also be sent by email to the appropriate person with the recipient.

10. **Indemnification.** Operator shall protect, defend, indemnify and hold harmless Owner, its members, representatives, successors, assigns, and affiliates from all claims, demands, losses, damages, or causes of action that might be asserted or claimed against any of them, including those asserting the Owner's negligence or other actionable conduct, unless it is determined that the persons or entities to be indemnified were solely negligent or otherwise solely responsible.

11. **Insurance.** At all times during this Agreement, the Operator shall procure and maintain the following policies of insurance:

Commercial General Liability including Products-Completed Operations with a limits of \$1,000,000/\$2,000,000; the aggregate limit for this coverage shall be Per Project or Per Location;

Workers' Compensation in the amount required by the laws of South Carolina;

Employers Liability with limits of \$500,000/\$500,000/\$500,000;

Automobile Liability with a limit of \$1,000,000;

Site Pollution with a limit of \$1,000,000;

Owner shall be named as an additional insured on the Operator's policy for Commercial General Liability.

All of the above policies, to the extent applicable, shall contain a waiver of subrogation against Owner, its members, representatives, successors, assigns, and affiliates.

There shall be provisions in, or an endorsement to, the above policies specifying that the Operator's insurance is primary and non-contributory.

Operator shall provide Owner with certificates of insurance for all the above coverages. These certificates of insurance shall include the following information in addition to the normal information provided in such certificates:

The limits of the commercial general liability policy.

List the Owner as an additional insured.

A listing of endorsements to the policy(ies) that limit coverage.

Confirm the policies provide for at least 30 days' prior written notice of cancellation to Owner.

Confirm the waiver of subrogation.

Confirm the policies are primary and no- contributory with respect to the coverages of Owner.

Confirm the commercial liability policy is written with a per project or per location aggregate.

Operator shall provide Owner with copies of the Operator's insurance policies upon request.

12. **Place of Agreement.** This Agreement and any questions regarding its validity, construction, or performance shall be governed by the laws of the State of South Carolina, notwithstanding the place of execution or the order in which the signatures of the fixed.

13. **Entire Agreement and Amendment.** This Agreement supersedes all prior negotiations, agreements and understandings between the parties with respect to the subject matter hereof and constitutes the entire agreement between the parties with respect to the subject matter hereof. To be effective, any amendment or modification to this Agreement must be in writing and must be signed by the parties.

14. **Severability.** In the event that any provision of this Agreement shall for any reason be determined to be invalid, illegal or unenforceable in any respect, the parties shall negotiate in good faith and agree to such amendments, modifications, or supplements of or to this Agreement or such other appropriate actions as shall, to the maximum extent practicable in light of such determination, implement and give effect to the intentions of the parties as reflected on this Agreement, and the other provisions of this Agreement shall, as so amended.

15. **Emergency Response.** Operator shall take all appropriate steps to protect and keep in operation the wastewater plant and related facilities in anticipation of a hurricane or other severe storm or natural event, and shall respond on-site to any alarm condition as soon as possible after receiving the alarm. Operator shall promptly report any spillage of raw wastewater in accordance with SCDHEC regulations.

16. **Independent Contractor.** The Operator is an independent contractor. Nothing in this Agreement shall be construed to create anything other than the relationship of independent contractor and Owner. Owner shall have no rights over Operator that would legally establish control over Operator. Nothing in this Agreement or any actions taken there under shall be deemed to establish the relationship of master/servant, principal/agent, joint venture, partnership, or other relationship that would impose vicarious liability on one for the acts of the other.

IN WITNESS WHEREOF, the parties hereto have executed this agreement in duplicate original, one of which is retained by each of the parties, the date and year first above written.

OWNER: KIAWAH RIVER UTILITY COMPANY

By:  \_\_\_\_\_

Print: John C.L. Darby  
President

Title: \_\_\_\_\_

Date: 4-12-19

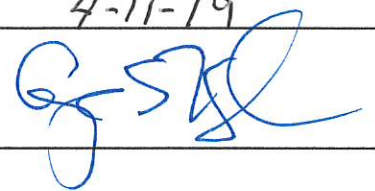
ATTEST: \_\_\_\_\_

OPERATOR: MS Agin & Associates

By:  \_\_\_\_\_

Name & Title: Michael J. Agin / owner

Date: 4-11-19

ATTEST:  \_\_\_\_\_